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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**EASTERN DIVISION**

SIGMA BETA XI, INC.; ANDREW  
M., by and through his next friend  
DENISE M., on behalf of himself and  
all others similarly situated; JACOB  
T., by and through his next friend  
HEATHER T., on behalf of himself  
and all others similarly situated; J.F.,  
by and through her next friend CINDY  
MCCONNELL, on behalf of herself  
and all others similarly situated,

Plaintiffs,

v.

COUNTY OF RIVERSIDE; MARK  
HAKE, Chief of the Riverside County  
Probation Department, in his official  
capacity; BRYCE HULSTROM, Chief  
Deputy of the Riverside County  
Probation Department, in his official  
capacity,

Defendants.

Case No. 5:18-cv-01399-JGB-JEM

**CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

*[Summary of Objections and Responses,  
Declarations of Sylvia Torres-Guillén,  
Linnea Nelson and Kelly Moran (and  
attached exhibits) and Proposed Order  
Filed Concurrently Hereto]*

Hearing Date: April 6, 2020

Hearing Time: 9:00 a.m.

Complaint Filed: July 1, 2018

Judge: Hon. Jesus G. Bernal

Mag. Judge: John E. McDermott

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**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on April 6, 2020, or on such date as may be specified by the Court, in the courtroom of the Honorable Jesus G. Bernal, United States District Court for the Central District of California, 3470 Twelfth Street, Riverside, California, Plaintiffs Sigma Beta Xi, Inc., Andrew M., Jacob T., and J.F. (together, “Plaintiffs”), on behalf of themselves and the class, hereby move for an order finally approving the terms of the proposed class action settlement reached with Defendants.

This motion for final approval (the “Motion”) is unopposed. It is made on the following grounds: (1) the proposed settlement is fair, adequate, and reasonable; (2) the class notice fairly and adequately informed the class members of the proposed settlement, their right to object, and the date and time of the final approval hearing; and (3) the parties have not received any objection from any class member.

This Motion is based upon this Notice of Motion, the Memorandum of Points and Authorities in support thereof, the Summary of Objections and Responses, the Declarations of Sylvia Torres-Guillén, Linnea Nelson and Kelly Moran (and the exhibits attached thereto), the unopposed proposed Final Approval Order, all of the

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1 papers and pleadings on file in this action, and any further evidence presented to the  
2 Court at the time of the hearing.

3  
4 Dated: March 9, 2020

5 By: /s/ Sylvia Torres-Guillén

6 ACLU FOUNDATION OF SOUTHERN  
7 CALIFORNIA

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9 Victor Leung

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**I. INTRODUCTION**

Plaintiffs and Defendants (together, the “Parties”) jointly move the Court for a final order approving the Settlement of Class Action Claims (the “Settlement”). On August 26, 2019, this Court entered an order preliminarily approving the Settlement, approving the form of notice to be given to the Class, and setting a date for the hearing for final approval of the Settlement. Since then, the Parties and the claims administrator have sent notice to class members by mail, through the Internet and by posting at specific locations. The Parties have not received any objections by class members, and the response from callers to the hotline established by the ACLU has been decidedly positive.

The settlement of this lawsuit is a substantial positive accomplishment for juvenile justice in Riverside County. It was filed in July 2018 by Plaintiffs Sigma Beta Xi, Inc., Jacob T., J.F., and Andrew M. (together, “Plaintiffs”) to challenge the legality of the Youth Accountability Team (“YAT”) program, which placed children as young as 12 years old under probation supervision for “pre-delinquent” school misconduct, including childish behavior such as “failure/refusal to follow directives (actively or passively),” “incurability,” school truancy and other behavior that falls into the broad category of “status offenses” under California Welfare & Institutions Code Section 601 (“Section 601”).

Plaintiffs contend that the YAT program violates the constitutional rights of youth in several ways, for example by failing to give them adequate or accurate notice, by failing to provide them with counsel, and by subjecting them to probation jurisdiction under Section 601, the terms of which are unconstitutionally vague on its face and as applied by the County. Plaintiffs also contend that the YAT program imposed intrusive and unconstitutional contract conditions that allowed officers to search youth in overly broad terms and restricted their expressive and associational rights. Plaintiffs contend that Black and Latinx children are disproportionately referred to the YAT program, and a disproportionate number of referrals for Black

1 and Latinx students are for the lowest-level offenses, in violation of California  
2 Government Code Section 11135, which prohibits disparate impact discrimination.  
3 Defendants disputed these contentions.

4 After several months of extensive arms-length negotiations, Plaintiffs reached  
5 final settlement terms with Defendants, County of Riverside, Mark Hake, and Bryce  
6 Hulstrom (“Defendants”) in July 2019. A copy of the Settlement Agreement (the  
7 “Agreement”) is attached as Exhibit A to the declaration of Sylvia Torres-Guillén.

8 The Agreement reflects the Parties’ deliberative, conscientious efforts to  
9 agree upon injunctive relief that substantially limits and reforms the YAT program,  
10 and to make other positive changes in the way the County operates its juvenile  
11 informal probation programs. Major changes achieved by the Settlement  
12 Agreement include:

- 13 • Youth will no longer be referred to the YAT program for allegedly violating  
14 Section 601.
- 15 • Effective July 1, 2019, the County terminated YAT probation for any  
16 youth who was then on YAT probation under Section 601 and notified the  
17 youth and the parent or guardian that the youth continues to be eligible for  
18 diversion under California Welfare and Institutions Code Section 654  
19 (“Section 654”).<sup>1</sup> The case files for all youth who were referred and/or  
20 placed on YAT probation without an underlying application for a petition  
21 to the juvenile court will be identified, sealed, and destroyed. This  
22 effectively means that all members of the class will have their records  
23  
24

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25  
26 <sup>1</sup> As the program is currently operated, youth who participate in the YAT program  
27 are prohibited in the future from participating in another diversion program under  
28 California Welfare and Institutions Code Section 654 as an alternative to charges in  
juvenile court. This Settlement will effectively remove that prohibition for youth  
who were placed in the YAT program for alleged violations of Section 601.

1 expunged so that there will be no record of them having participated in any  
2 informal diversion program.

- 3 • All youth referred to the YAT program will receive appointed defense  
4 counsel at no cost. These defense counsel will now be part of the YAT  
5 team and will provide advice and information to the youth throughout the  
6 process.
- 7 • The County will provide more accurate, complete, and informative notice  
8 to youth referred to the YAT program and their parents or guardians, using  
9 a template attached to the Agreement.
- 10 • YAT contracts will be more individualized, will focus more on positive  
11 development, and will not contain search terms or associational limits.  
12 There shall be a presumption against drug or alcohol testing. Drug and  
13 alcohol testing will be very limited to cases where a direct nexus between  
14 the condition and the alleged offense is established to warrant that provision  
15 or where subsequent incidents of drug or alcohol use by the youth have  
16 been identified. The County will use a template contract attached to the  
17 Agreement. YAT program records for participating youth will be sealed or  
18 destroyed either automatically or pursuant to certain procedures, depending  
19 on the case type, and with assistance of counsel.
- 20 • Riverside County will no longer have YAT offices in middle schools or  
21 high schools.
- 22 • The Riverside County Probation Department (“Probation Department”)  
23 will modify its policies and provide extensive training, as described in the  
24 Agreement.
- 25 • The membership of the Juvenile Justice Coordinating Council (“JJCC”),  
26 which oversees the YAT program, will now have at least 45% community  
27 representation, and the County will provide at least \$7 million in funding  
28

1 to community organizations, *i.e.*, \$1.4 million on an annual basis for five  
2 years beginning in fiscal year 2020/2021.

- 3 • Two experts who have decades of experience between them in positive  
4 youth development, understanding how probation departments function,  
5 and creating transformational change in probation departments will jointly  
6 monitor the County's compliance with the Agreement for five years.

7 The significant benefits achieved by the Settlement, the positive reaction of  
8 the class members and complete lack of any objections demonstrate that the  
9 Settlement is not only fair, adequate, and reasonable, but overwhelmingly positive.  
10 Accordingly, the Parties respectfully request the Court grant final approval of the  
11 Settlement. Plaintiffs also request that the Court grant their unopposed Motion For  
12 Attorneys' Fees, which the Court set for hearing on the same date as this Motion.

13 **II. PROCEDURAL BACKGROUND**

14 Plaintiffs filed their initial complaint on July 1, 2018. (ECF 1.) On  
15 September 13, 2018, they moved for class certification and appointment of class  
16 counsel. (ECF 33.) Defendants stipulated to class certification and appointment of  
17 class counsel. (ECF 35.) Shortly thereafter, the Court issued an order granting the  
18 motion, certifying the class and appointing Plaintiffs' counsel as class counsel.  
19 (ECF 37.) The Court's order defined the class as:

20 All children in Riverside County who have been referred to the  
21 Riverside County Youth Accountability Team ("YAT") program  
22 pursuant to Cal. Welf. & Inst. Code § 601, and who have either been  
placed on a YAT contract or have been referred but not yet placed on a  
YAT probation contract.

23 (*Id.*, p. 2:8-12.) Plaintiffs filed a First Amended Complaint (the "FAC") on  
24 September 26, 2018.

25 From November 2018 through July 2019, the Parties engaged in informal  
26 discovery and serious, arms-length settlement discussions, which occurred over the  
27 course of nearly twenty in-person meetings and additional telephonic meetings.  
28 (Torres-Guillén Decl., ¶ 9.) On July 23, 2019, the Parties agreed to final settlement

1 terms. (*Id.*, ¶ 13.) A copy of the final Agreement is attached to the declaration of  
2 Sylvia Torres-Guillén as Exhibit 1. (*Id.*, Ex. 1.)

3 On July 24, 2019, Plaintiffs filed a Motion for Preliminary Approval. (ECF  
4 57.) The Motion for Preliminary Approval was unopposed and the Court held a  
5 hearing on August 26, 2019. (ECF 59.) The Court considered a number of factors,  
6 and ultimately determined that they all weighed in favor of preliminary approval of  
7 the Agreement. Thus, the Court granted preliminary approval of the proposed  
8 Agreement as fair, reasonable, and adequate for members of the settlement class.  
9 (*Id.*) The Court further determined that the proposed notice plan was appropriate  
10 under the circumstances of this case. (*Id.*)

11 On December 19, 2019, the Court ordered notice to be completed by  
12 January 3, 2020, the settlement class members to have until February 17, 2020 to  
13 file any objection to the Agreement, the Parties to file a summary of objections or  
14 responses received, if any, no later than March 9, 2020, and the Plaintiffs to file a  
15 motion for final approval no later than March 9, 2020. (ECF 77.)

### 16 **III. THE SETTLEMENT**

17 The Parties' settlement is detailed and expansive. It makes significant  
18 changes to the way the County operates the YAT program and other non-court-  
19 ordered juvenile probation supervision programs, and it provides additional training  
20 and monitoring. It also increases community involvement and funding to  
21 community organizations. In exchange, class members will agree to release  
22 Defendants from liability for the claims for declaratory or injunctive relief brought  
23 in this lawsuit. The major terms of the Agreement are summarized below.

#### 24 **A. Changes to the Youth Accountability Team and Other Programs and Policies**

##### 25 **1. Referrals to YAT and YAT Contracts Will No Longer Include** 26 **Youth Alleged to Violate Section 601**

27 One of Plaintiffs' core allegations was that youth whose referrals were based  
28 on California Welfare and Institutions Code Section 601 ("Section 601"), *i.e.*, the

1 class members, should not be referred to YAT probation because they were often  
2 accused of only minor school misbehavior not warranting involvement by law  
3 enforcement. Under the Agreement, Defendants have agreed that these youth will  
4 no longer be referred to the YAT program or other non-court-ordered probation  
5 supervision programs, and that Defendants will no longer accept such referrals from  
6 schools or other sources. (Agreement, ¶ III(A)-(B).)

7 The only youth who will be referred to or placed in the YAT program and  
8 similar County programs are those referred under California Welfare and  
9 Institutions Code Section 602 (“Section 602”), which covers circumstances  
10 involving allegations of purported criminal violations. (*Id.*) The Agreement also  
11 provides comprehensive constitutional protections for youth referred and/or placed  
12 in the YAT program or any other non-court-ordered supervision program for  
13 allegedly violating Section 602. (*Id.*, ¶ III(C).)

14 **2. Defense Counsel Will Now Be Provided for All Youth Referred to**  
15 **YAT**

16 Defendants have agreed to provide defense counsel at no cost for all youth  
17 referred to the YAT program or other non-court-ordered supervision programs.  
18 (Agreement, ¶ IV(A)-(F).) The Parties also agreed that, within seven days of  
19 executing the Agreement, the parties would file a joint application to the Presiding  
20 Judge of the Riverside County Juvenile Court, requesting that the Court appoint  
21 counsel for all youth in YAT-related cases or any non-court ordered supervision  
22 programs. On December 13, 2019, the Honorable Judith C. Clark of the Superior  
23 Court of California, Riverside (Supervising Juvenile Court Judge for the Riverside  
24 Superior Court) issued an order recognizing that, pursuant to agreement and  
25 stipulation by the Parties, all youth referred to and involved in a non-court-ordered  
26 probation supervision program operated by the County, including the YAT program,  
27 must be provided counsel by the County, for the purposes of the youth’s  
28 involvement in the YAT program and/or any other non-court-ordered supervision



1 program, at no cost to the youth from the time the youth is referred to the YAT  
2 program or any other non-court-ordered probation supervision program through the  
3 time that all documents related to the youth's referral and/or participation in the  
4 YAT program or any other non-court-ordered probation supervision program are  
5 sealed and destroyed. As conveyed to Judge Clark during several hearings on this  
6 matter, and most recently at the December 13, 2019 hearing, the County of  
7 Riverside agreed to fund the Juvenile Defense Panel so that the Juvenile Defense  
8 Panel will be able to hire a team of lawyers and staff to effectively and zealously  
9 represent all youth referred to the YAT program. (Torres-Guillén Decl. ¶ 15.)

10 The Parties agreed that youth who are referred to the YAT program or any  
11 other non-court-ordered supervision program will consult with counsel before  
12 meeting with the Probation Department or deciding whether to participate in the  
13 program. (Agreement, ¶ IV(F).) The role of legal counsel will be to advocate for  
14 and protect the rights of the youth client, including ensuring that the youth (1)  
15 understands all applicable legal rights, (2) understands the potential consequences  
16 and benefits of either entering the program or proceeding to court, and (3) is able to  
17 knowingly, voluntarily, and intelligently make a decision regarding participation.  
18 (*Id.*, ¶ IV(B).) If, after consultation with counsel, the youth chooses to enter the  
19 program, defense counsel's representation shall continue through the end of the  
20 program, and will also include representation to ensure that, as permitted or required  
21 by law, the youth's records and files are timely sealed and/or destroyed. (*Id.*,  
22 ¶ IV(F).) Defense counsel will also continue to be involved throughout the youth's  
23 participation in the YAT program.

### 24 **3. Defense Counsel Will Now Be Part of the YAT Team**

25 Defendants have agreed that defense counsel will be a part of the YAT team  
26 or any other non-court-ordered supervision program team. (Agreement, ¶ IV(A).)  
27 Defense counsel will then be able to work with the team to ensure that the youth  
28 receives the resources and supports the youth has requested or needed as part of the

1 YAT program or any other non-court-ordered supervision program. This includes,  
2 determining with the youth, and the youth's parent/guardian, before meeting with  
3 probation, what resources, opportunities, and supports the youth should be provided  
4 to ensure personal and academic success and health. It also includes coming  
5 together with the Probation Department to collectively create the program that is  
6 most holistically helpful for the youth so that the YAT program is held accountable  
7 to effectively serve the youth throughout the program.

8 **4. Robust Notice Will Be Provided to Youths and Their**  
9 **Parents/Guardians**

10 The Parties agreed that youth will be afforded due process in all contacts with  
11 Defendants related to the YAT program or any other non-court-ordered supervision  
12 program. (Agreement, ¶ V(A).) As such, before assigning any youth to the YAT  
13 program, the Probation Department shall determine that there is probable cause to  
14 believe the youth committed the alleged offense that is the basis for the petition.  
15 (Agreement, ¶ V(A)(1).)

16 When a youth is referred to the YAT program, the Probation Department will  
17 provide the youth and the youth's parent or guardian(s) with an easy-to-understand  
18 notice, available in English and Spanish, that includes: (a) the charges and  
19 allegations made against the youth; (b) a description of the YAT program; (c) notice  
20 that information regarding the youth's participation may be disclosed to the juvenile  
21 court in future proceedings; (d) notice that the youth's information will be stored in  
22 County records, unless the records are later sealed or destroyed; (e) the criteria for  
23 successful completion of the program; and (f) the right to have certified  
24 interpretation at YAT program meetings. (Agreement, ¶ V(A)(2)-(3).)

25 If the youth chooses to participate, the Probation Department must also  
26 provide notice of completion of the program and/or notice if the youth is in danger  
27 of not completing the program. (Agreement, ¶ V(A)(9)-(10).) Additional  
28 protections and procedures are required in special circumstances involving



1 accommodations for disabilities, or where the Probation Department seeks to  
2 impose drug or alcohol testing and in other circumstances more fully described in  
3 the Agreement. (Agreement, ¶ V(A)(4), (6), (7).)

4 **5. Training and Guidelines Will Ensure Reliability of Risk Assessments**

5 The Probation Department currently uses the Ohio Youth Assessment System  
6 for Diversion (“OYAS”) to determine whether youth referred to the YAT program  
7 should be put on a YAT contract or should receive lesser interventions. (Agreement,  
8 ¶ VI(A).) The two lesser inventions are (1) a 30-day consequence agreement, or (2)  
9 “counsel and close,” *i.e.*, providing an advisory/warning to the youth and closing the  
10 case. (*Id.*)

11 The Agreement provides training and guidelines aimed at ensuring reliability  
12 and consistency in officers’ use of the OYAS system or any other risk assessment  
13 system, should the Probation Department change systems. (*Id.*, ¶ VI(A)(1)-(2).) This  
14 training and assessment will also reduce the impact of any explicit or implicit racial  
15 biases on the risk assessment process.

16 **6. YAT Contracts Will Provide Constitutionally Sufficient Notice,**  
17 **Focus on More Positive Development, and Exclude Allegedly**  
18 **Unconstitutional Terms**

19 Plaintiffs allege that the YAT program fails to provide adequate notice to the  
20 youth and parent or guardian(s); and the form of contracts used by the YAT program  
21 include unconstitutional terms and focus on punitive measures to obtain the youth’s  
22 compliance. The Agreement reforms these contracts and the process for developing  
23 them.

24 Under the Agreement, when a youth decides to participate in the YAT  
25 program, the youth’s contract will be jointly developed by the youth, the youth’s  
26 parent(s) or guardian(s), defense counsel, and the YAT probation officer, based on  
27 the template attached to the Agreement as Exhibit A. (Agreement, Ex. 1(A).) The  
28 contract will provide information including the charges or allegations against the

1 youth, positive development goals, identification of the youth's strengths, resources  
2 for the youth and other terms relating to the youth's participation. (*Id.*, ¶ VII(A)(1)-  
3 (2) (list of information included in contracts), Ex. 1(A) (contract template).)

4 No YAT contract shall include the following terms: (1) tour of a correctional  
5 facility; (2) prohibitions against the youth associating with particular persons;<sup>2</sup> or (3)  
6 searches of the youth's person, vehicle, premises, cell phone, or other personal  
7 possession. (Agreement, ¶ VII(A)(5)(a)-(c).)

8 There will be a presumption against including contract terms allowing drug or  
9 alcohol testing. (Agreement, ¶ V(A)(4).) Such terms may only be provided if there  
10 is a direct nexus between the condition and the alleged offense, or where subsequent  
11 incidents of drug or alcohol usage have been identified. (*Id.*, ¶ V(A)(4), VII(A)(6).)  
12 When such terms are included, additional notice and safeguards are required. (*Id.*)

13 The contracts must be translated into another language when needed for the  
14 youth or the youth's parent or guardian. (Agreement, ¶ VII(A)(3).) The Probation  
15 Department must also provide accommodations for students with disabilities. (*Id.*, ¶  
16 VII(A)(3)-(4).)

17 **7. The Probation Department Will Provide Increased Protections**  
18 **Regarding Record Collection, Creation, and Retention**

19 The Parties agreed that the Probation Department will not collect or maintain  
20 information on youth who do not fall under Welfare & Institutions Code Sections  
21 601 or 602. (Agreement, ¶ VIII(A).) For those referred to the YAT program under  
22 Section 601, the Probation Department will retain only information that is obtained  
23 in the application for a petition, and only for the period of time required by the  
24 Probation Department's document retention policy. (*Id.*) No information about  
25 youth referred under Section 601 will be maintained in any gang-related intelligence  
26

27 \_\_\_\_\_  
28 <sup>2</sup> The Settlement Agreement provides an exception for co-participants, victims, or  
witnesses related to the alleged referral offense. (Agreement, ¶ VII(A)(5)(b).)

1 databases, nor will the Probation Department seek or obtain information related to  
2 the immigration status of the youth or their parents or guardian(s). (*Id.*, ¶ VIII(B)-  
3 (C).)

4 For youth referred under Section 602, the Probation Department will seek to  
5 minimize the amount of information requested and retained from the youth and the  
6 youth's parent or guardian, and it will maintain confidentiality over the records as  
7 provided by applicable law. (Agreement, ¶ VIII(D)(2)-(3).) Youth and their parents or  
8 guardians will have the right to inspect the information retained, and the Probation  
9 Department must provide notice prior to obtaining certain information concerning health  
10 or mental health. (*Id.*, ¶ VIII(D)(2)-(3).)

11 **8. The Department Will Provide Data for Analysis of Referrals,**  
12 **Participation, and Outcomes in YAT**

13 The Parties agreed that the Probation Department will provide the Juvenile  
14 Justice Coordinating Council ("JJCC") and the County Executive Officer annual  
15 analyses of anonymized data regarding referrals, participation and outcomes for  
16 youth in the YAT program or any other non-court-ordered juvenile supervision  
17 program, including disaggregation by race and ethnicity to track and address racial  
18 disparities. (Agreement, ¶ IX(A)-(B).) Written reports will be publicly available.  
19 (*Id.* ¶ IX(B).) These reports and analyses will allow the JJCC, the County, and  
20 others to evaluate the effectiveness of the program and identify disparities and  
21 problems.

22 The report shall include information collected by the Probation Department  
23 throughout the year. Specifically, within 180 days of the effective date of the  
24 Agreement, the Defendants shall, on a quarterly basis, collect and analyze data  
25 regarding youth who are placed into the YAT program or any other non-court-  
26 ordered supervision program. (Agreement, ¶ IX(A).) Defendants' analysis shall  
27 disaggregate the collected data by race/ethnicity, gender, age at time of alleged  
28

1 offense, and foster youth status. (*Id.*) The written reports will be published and  
2 maintained at the Probation Department website. (*Id.*, ¶ IX(B).)

3       **9. The Department Will Conduct YAT-Specific Training and Modify**  
4       **Certain Policies and Public Information**

5       The Parties agreed that the Probation Department will create a mandatory  
6 training program for personnel involved in the YAT program and similar programs  
7 and to personnel assigned to juvenile intake functions. (Agreement, X(D).) The  
8 Defendants agreed to provide such training on a yearly basis on the modified  
9 policies and procedures reflected in the Agreement. (*Id.*, ¶ X(B), (D).) The training,  
10 which will be led by experts Scott MacDonald and Naomi Goldstein, will  
11 emphasize: positive youth development, identifying needed educational supports,  
12 learning about youth responses to trauma, and increasing cultural competence and  
13 awareness of implicit bias. (*Id.*, ¶ X(D), Ex. 1(B).)

14       The County will revise all policies, procedures and public information to  
15 conform to the terms of the Agreement. (Agreement, ¶ X(A), (C).) Defendants will  
16 also incorporate all the existing policies, processes and/or operating procedures,  
17 whether written or unwritten, into their new training program. (*Id.*, X(A).)

18       **10. Seven Million Dollars of Funding Will Be Provided to Community-**  
19       **Based Organizations to Serve Youth Referred to or in the YAT**  
20       **Program, and Membership on the Juvenile Justice Coordinating**  
21       **Council Will Be Expanded to Allow for Greater Community Input**

22       The JJCC is a County body composed of representatives from the Probation  
23 Department, law enforcement agencies, schools, social service agencies, and  
24 community service providers. The JJCC's role is to oversee and distribute funding  
25 for County programs, including the YAT program, that are funded through the  
26 Juvenile Justice Crime Prevention Act.

27       The County agreed to add five additional community representatives to the  
28 JJCC, to be appointed through the Riverside County Board of Supervisors.  
(Agreement, ¶ XI(A).) Plaintiff Sigma Beta Xi, Inc., will have an additional seat on

1 the JJCC for two years. (*Id.*) The JJCC, in addition to its statutory duties, shall  
2 solicit and incorporate community feedback, review the data reports generated by  
3 the County described in Section IX of the Agreement, develop action plans and  
4 strategies to reduce disproportionalities in referrals and enrollment of youth in the  
5 YAT program, evaluate the effectiveness of the program and services provided in  
6 the YAT program, and identify potential improvements or modifications to  
7 Defendants' policies and/or practices. (*Id.*)

8 The County will also provide a minimum of \$7 million to community-based  
9 organizations that have focused on positive youth development practices and have  
10 demonstrated effectiveness in providing affirmative, evidence-based supports or  
11 services primarily to the Riverside County community on a voluntary basis.  
12 (Agreement, ¶ XII.) Specifically, the County will provide \$1.4 million annually for  
13 five years to these community-based organizations, subject to a request for proposal  
14 process, including review by the JJCC. (*Id.*)

15 **11. YAT Case Files for Individual Youth Will Be Sealed or Destroyed,**  
16 **Which Will Effectively Result in Expungement**

17 The Agreement provides a process to seal and/or destroy individual YAT case  
18 files, which will differ for youth, depending upon how they were referred.  
19 (Agreement ¶ XIII.) Specifically, within 180 days of the effective date of the  
20 Agreement, all such files will be identified and specific action shall be taken. (*Id.*, ¶  
21 XIII(A).)

22 For each youth referred to or placed on YAT probation *without* an  
23 application for a petition, the Probation Department will identify, seal and destroy  
24 the youth's YAT file within 180 days of the effective date of the Agreement.  
25 (Agreement, ¶ XIII(A)(1).) For youth who are referred to or placed on YAT *with*  
26 an application for a petition under the jurisdiction of Section 601, the Probation  
27 Department will maintain or destroy the youth's YAT file, consistent with the  
28 department's two-year document retention policy. Any such file that is maintained

1 will be destroyed immediately after the two-year time period has elapsed.  
2 (Agreement, ¶ XIII(A)(2).)

3 For youth referred to or placed in the YAT program pursuant to Section 602,  
4 the Parties filed an application to Supervising Juvenile Court Judge Clark,  
5 requesting that the Riverside County Juvenile Court seal all juvenile case files that  
6 would be eligible for sealing in accordance with applicable juvenile laws.

7 (Agreement, ¶ XIII(A)(3).) On December 20, 2019, Judge Clark issued an order  
8 recognizing that the Probation Department shall seal the YAT program case file  
9 records in its custody relating to 23,717 youth whom the Probation Department has  
10 deemed to have “successfully completed” the YAT program, pursuant to California  
11 Welfare & Institutions Code Section 786.5. The Probation Department shall also  
12 notify all public or private agencies involved in operating the YAT program to seal  
13 the YAT program case file records of these 23,717 youth. The Parties agreed in  
14 December 2019 that, for the approximately 3,700 youth who were referred and/or  
15 who were placed in the program pursuant to Section 602 who have not been  
16 deemed by the Probation Department to have “successfully completed” the YAT  
17 program, the County will contract with the Juvenile Defense Panel to contact those  
18 individuals and file petitions to have their YAT program case file records sealed  
19 pursuant to California Welfare & Institutions Code Section 781. (Torres-Guillén  
20 Decl. ¶ 15.)

21 **12. The Probation Department Will Agree to Enforcement Measures**  
22 **and Monitoring**

23 The Agreement identifies specific records that Defendants will provide to  
24 Class Counsel to certify that Defendants are complying with specific terms of the  
25 settlement. (Agreement, ¶ XIV(A).) These records will include all amendments and  
26 modifications to Defendants’ departmental policies and procedures regarding the  
27 YAT program or any other non-court-ordered supervision program administered by  
28 the Probation Department, consistent with the Agreement. (*Id.*, ¶ XIV(A)(1).) All



1 awareness, educational, and outreach information created, drafted, or released by  
2 Defendants reflecting the terms of the Agreement will be provided to Class Counsel.  
3 (*Id.*, ¶ XIV(A) (2).) In addition, all template notifications sent to minors and/or their  
4 parents and guardians and all template voluntary juvenile probation contracts used  
5 in the YAT program or any other non-court-ordered supervision program  
6 administered by Defendants will be provided to Class Counsel. (*Id.*, ¶ XIV(A)(3)-  
7 (4).)

8 The Parties also agree that the Court should appoint Scott MacDonald and  
9 Naomi Goldstein as qualified joint third-party monitors to ensure the County's  
10 compliance with the Agreement. (*Id.*, ¶ XIV(B).) These two experts have decades  
11 of experience between them in positive youth development, and in understanding  
12 how probation departments function and how to create transformational change in  
13 probation departments. They will jointly monitor the County for five years and  
14 provide the Court with the information necessary to oversee Defendants'  
15 compliance during the period of time that the Court will maintain jurisdiction over  
16 this case.

17 **B. The Plaintiffs and the Class Members Will Agree to a Release**

18 In exchange for the benefits conferred by the Settlement, the Plaintiffs and  
19 class members agree to release Defendants from liability for the claims for  
20 declaratory or injunctive relief brought in this lawsuit, as further described in the  
21 Agreement. (Agreement, ¶¶ II(A), I(J).)

22 **C. The Parties Have Agreed to Payment of Attorneys' Fees and Costs**

23 Defendants agree to pay attorneys' fees and costs to Class Counsel of  
24 \$1 million. The Parties have agreed that this is a fair, reasonable, and appropriate  
25 amount, given the significant time and effort that Class Counsel has spent  
26 investigating this case pre-litigation, drafting and developing the complex and  
27 comprehensive pleadings, moving for class certification, conducting formal and  
28 informal discovery, and drafting and negotiating a very detailed and complex

1 settlement at arms-length over a period of several months. (*See* Torres-Guillén  
2 Decl., ¶¶ 9-10.)

3 The attorneys' fees are also fair, reasonable and appropriate given that Class  
4 Counsel are highly experienced, well-regarded, skilled litigators who effectively  
5 managed this complex class action; achieved an exceptional result for the thousands  
6 of class members, protecting critical constitutional and civil rights; and was the  
7 result of Class Counsel's extensive and uncompensated effort since initiating their  
8 investigation into the YAT program in 2015. (*See* Torres-Guillén Decl., ¶¶ 3-19,  
9 Exs. 2-5.) The amount of fees sought is particularly reasonable considering that, as  
10 a result of settlement negotiations, Class Counsel have substantially discounted their  
11 fees below their lodestar and the amount that they would have sought in the absence  
12 of a settlement agreement. (*Id.*, ¶ 18.)

13 **D. This Court Will Have Continuing Jurisdiction**

14 The Agreement provides that the District Court will retain jurisdiction to  
15 oversee compliance with the Agreement, enforce the Agreement's terms, and hear  
16 any disputes that cannot be informally resolved by the Parties pursuant to the  
17 dispute resolution process set forth in the Agreement. (Agreement, ¶ XV.) The  
18 basis for the fees sought is set forth in further detail in Plaintiffs' unopposed Motion  
19 for Attorneys' Fees, which the Court set for hearing the same date as the hearing on  
20 this Motion.

21 **IV. NOTICE TO THE CLASS AND OBJECTIONS AND**  
22 **RESPONSES RECEIVED**

23 Consistent with the Settlement Agreement and the Court's orders, the Parties  
24 have provided notice to the class members in the following ways: (1) mailing the  
25 notice to class members' addresses; (2) posting the notice on the County's website;  
26 (3) posting the notice on the websites of the ACLU of Southern California, ACLU of  
27 Northern California, ACLU of San Diego and Imperial Counties, and the National  
28 Center for Youth Law; (4) posting the notice in areas where YAT probation officers



1 are regularly stationed; and (5) providing the notice to juvenile defense attorneys for  
2 the County; (6) posting the notice in areas where YAT probation officers are regularly  
3 stationed. (Nelson Decl., ¶¶ 3-4; Declaration of Kelly Moran (“Moran Decl.”), ¶¶ 4,  
4 7.) The direct notice by mail was completed by January 3, 2020 in English, and by  
5 January 17, 2020 in Spanish. (Moran Decl., ¶ 11.)

6 The notice informed class members that they could object or respond to the  
7 Settlement, or seek more information, by sending a statement to Class Counsel  
8 Linnea Nelson at the ACLU of Northern California’s address or email. (Nelson  
9 Decl., ¶ 10.) During the response period, of the tens of thousands of affected youth,  
10 Class Counsel received 154 voicemail messages on the Hotline by class members  
11 and/or their parents or guardians, and responded to all of them by phone. (*Id.*, ¶ 13.)  
12 One individual contacted Ms. Nelson by email. (*Id.*, ¶ 9.) At least ten of the callers  
13 to the Hotline affirmatively expressed support of the Settlement. (*Id.*, ¶ 15.) Only  
14 two individuals had any kind of negative reaction. (*Id.*, ¶ 16.) The individual who  
15 contacted Ms. Nelson by email stated that she had a positive experience with the  
16 YAT program and thought the lawsuit was the “funniest lawsuit” she had ever seen.  
17 (*Id.*) The reaction of the other individual, who called the Hotline, was characterized  
18 as negative because, as a parent of two potential class members who were referred  
19 to the YAT program, she felt her children had been harmed by the YAT program  
20 and was upset the class did not seek monetary damages. (*Id.*)

21 Importantly, to date, Class Counsel has not received a single objection to the  
22 Settlement either by phone, in person or in writing. (Nelson Decl., ¶ 17.) Counsel  
23 for Defendants also has not received any objection whatsoever to the Settlement  
24 from class members or their parents or guardians, either by phone, in person or in  
25 writing. (Moran Decl., ¶ 13.)

## 26 **V. LEGAL STANDARD FOR FINAL APPROVAL OF CLASS SETTLEMENT**

27 The Court shall grant final approval of a class action settlement if it is “fair,  
28 reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). “[T]he question whether a

1 settlement is fundamentally fair within the meaning of Rule 23(e) is not the same as  
2 asking the reviewing court if perfection has been achieved. Although Rule 23  
3 imposes strict procedural requirements on the approval of a class settlement, a  
4 district court's only role in reviewing the substance of that settlement is to ensure  
5 that it is "fair, adequate, and free from collusion." *Fraley v. Facebook, Inc.*, 966 F.  
6 Supp. 2d 939, 941 (N.D. Cal. 2013) (internal citations omitted). In considering  
7 whether a settlement is "fair, reasonable, and adequate," the court should consider  
8 whether (A) "the class representatives and class counsel have adequately  
9 represented the class"; (B) "the proposal was negotiated at arm's length"; (C) "the  
10 relief provided for the class is adequate"; and (D) "the proposal treats class members  
11 equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(A)-(D).

12 In making this determination, the Ninth Circuit considers the following factors:  
13 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely  
14 duration of further litigation; (3) the risk of maintaining class action status throughout  
15 the trial; (4) the extent of discovery completed and the stage of the proceedings; (5)  
16 the amount offered in settlement; (6) the experience and views of counsel; (7) the  
17 presence of a governmental participant; and, (8) the reaction of the class members to  
18 the settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003).

## 19 VI. THE COURT SHOULD GRANT FINAL APPROVAL

20 The Court should grant final approval of the Settlement for the reasons  
21 described at length in the Motion for Preliminary Approval, and also because there  
22 have been no objections to the Settlement by any class member.

### 23 A. The Settlement was the Result of Informed, Non-Collusive, and Arms- 24 Length Negotiations Between Experienced Counsel

25 Courts presume that a class action settlement was fair and reasonable when it  
26 was the result of "non-collusive, arms' length negotiations conducted by capable  
27 and experienced counsel." *In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD,  
28 2013 WL 1120801, at \*4 (N.D. Cal. Mar. 18, 2013). "To determine whether there

1 has been any collusion between the parties, courts must evaluate whether ‘fees and  
2 relief provisions clearly suggest the possibility that class interests gave way to self  
3 interests,’ thereby raising the possibility that the settlement agreement is the result  
4 of overt misconduct by the negotiators or improper incentives for certain class  
5 members at the expense of others.” *Litty v. Merrill Lynch & Co.*, Case No. CV 14-  
6 0425 PA (PJWx), 2015 WL 4698475, \*108 (C.D. Cal. Apr. 27, 2015) (*quoting*  
7 *Staton*, 327 F.3d at 961).

8 Here, settlement negotiations were conducted at arms’ length, with extensive  
9 back-and-forth between the Parties on dozens of substantive points. The Parties  
10 reached final settlement terms after nearly twenty in-person meetings and numerous  
11 telephonic meetings over more than six months. (Torres-Guillén Decl., ¶ 9.) These  
12 discussions were conducted by highly experienced, well-regarded counsel, with  
13 significant experience in litigation, civil rights, juvenile justice, criminal justice,  
14 class actions, and other complex litigation. (*Id.*, ¶ 19, Exs. 2-5.) Class Counsel  
15 were able to achieve exceptional and comprehensive results for the class that  
16 protects their constitutional and civil rights. (*Id.*, ¶¶ 15-19.) These results  
17 beneficially reach both the youth who were previously referred and placed in the  
18 constitutionally infirm YAT program and those who will be referred to and placed  
19 in the transformed and youth-centered YAT program. These facts weigh in favor of  
20 final approval.

21 Additionally, “[t]he parties must . . . have engaged in sufficient investigation of  
22 the facts to enable the court to intelligently make an appraisal of the settlement.”  
23 *Acosta v. TransUnion, LLC*, 243 F.R.D. 377, 396 (C.D. Cal. 2007) (internal quotation  
24 marks omitted). In this case, negotiations were informed by extensive formal and  
25 informal discovery provided by Defendants, thousands of pages of public records  
26 obtained by Plaintiffs prior to filing the lawsuit, and Plaintiffs’ comprehensive  
27 independent investigations. (Torres-Guillén Decl., ¶¶ 3-6.) Class Counsel reviewed  
28 the information obtained and analyzed the YAT program, including the manner it was

1 being implemented, the youth targeted, and the constitutional rights and violations  
2 implicated. (*Id.*, ¶¶ 4-5.) After carefully assessing the issues and working closely  
3 with Plaintiffs and other members of the class, Class Counsel developed a  
4 comprehensive plan to eradicate the problems in the YAT program and put in place  
5 positive reforms. (*Id.*, ¶ 6.) Although Plaintiffs did not conduct depositions, there  
6 were extensive day-long meetings with Defendants and Defendants’ counsel to further  
7 assess, address, and correct the issues regarding how the YAT program is operated  
8 and a myriad of other Probation Department policies and procedures. Almost all of  
9 these meetings included high-level staff from the Probation Department and the  
10 County who provided significant insight and information regarding how the YAT  
11 program works and feedback on the feasibility of proposed reforms. (*Id.*, ¶¶ 10, 12.)  
12 This substantial information, which was obtained through careful investigation and  
13 review of all the documentary evidence, and gathered through extensive meetings with  
14 Defendants and Defendants’ counsel, was sufficient to give the parties a clear view of  
15 the strengths and weaknesses of their respective cases.

16 This Agreement was based in large part on the information learned from  
17 extensive fact-finding that was conducted in this case. Circumstances indicating  
18 extensive discovery and fact-finding support approval of the class settlement. *See*  
19 *Lewis v. Starbucks Corp.*, No. 2:07-cv-00490-MCE, 2008 WL 4196690, at \*6 (E.D.  
20 Cal. Sept. 11, 2008) (“[A]pproval of a class action settlement is proper as long as  
21 discovery allowed the parties to form a clear view of the strengths and weaknesses of  
22 their cases.”).

23 The resulting Agreement is highly detailed and exceptionally favorable to the  
24 class members and all other youth in Riverside County who may become involved  
25 in the YAT program or other non-court-ordered probation supervision programs in  
26 the future. The Agreement also includes the creation of template documents that  
27 would be used in the various stage of the YAT program, from the initial notice given  
28 to youth to the actual YAT contract. (Agreement, Ex. 1(A).) It reflects both sides’

1 conscientious efforts to provide meaningful, beneficial changes in the YAT program  
2 and any other non-court-ordered supervision program operated by the Probation  
3 Department, and in related governmental processes. (Torres-Guillén Decl., ¶ 16.)  
4 Class Counsel also urged, fought for, and secured agreement from the County to  
5 allow defense counsel to be part of the YAT team and to provide defense counsel at  
6 no cost to all youth throughout the program. (*Id.*, ¶ 15.) This new right for all youth  
7 who are referred to the YAT program or any other non-court-ordered probation  
8 supervision to receive no-cost defense counsel will be historic. (*Id.*) In sum, this  
9 Agreement amply demonstrates that the Parties' negotiations were informed, arm's-  
10 length, and non-collusive.

11 **B. The Substantial Relief Provided by the Settlement Is Fair and Reasonable**  
12 **Given the Strength of Plaintiffs' Case and the Risks of Litigation**

13 The law and the evidence fully support Plaintiffs' claims that Defendants'  
14 operation of the YAT program violates the constitutional rights of the class  
15 members and that Section 601 is unconstitutionally vague. For example,  
16 Defendants failed to give adequate notice to youth and their guardians about the  
17 voluntary nature of the program, the basis of their referrals to the YAT program, the  
18 requirements of the program, and the fact that participating in the program would  
19 make them ineligible for diversion in the future. (*See* FAC, ECF 38, ¶¶ 8-9, 53-63,  
20 76, 87-92, 99-104, 110-120, 141-147.) Instead, youth were urged to agree to YAT  
21 contracts in highly coercive environments (often at law enforcement offices) and  
22 without any legal counsel. (*See id.*) These facts strongly support Plaintiffs' theory  
23 that Defendants violated the due process rights of youth referred to the YAT  
24 program. For class members—who were referred pursuant to Section 601—this  
25 claim is even stronger because in Riverside County there was little or no possibility  
26 of prosecuting these youth for this kind of conduct, which is typically no more than  
27  
28

1 minor childhood misbehavior. (*See id.*, ¶¶ 40-52.) This is just one example of the  
2 strength of Plaintiffs' claims.

3 Plaintiffs' case was also strengthened by Defendants' agreement to stipulate  
4 to class certification and the appointment of class counsel. In September 2018, the  
5 Court granted the motion, concluding that the class action satisfied the requirements  
6 of numerosity, commonality, typicality, and adequacy, and that it was appropriate as  
7 a Rule 23(b)(2) injunctive relief class to address the legal claims of potentially  
8 thousands of youth who were referred and/or placed in the YAT program. (ECF  
9 37.) Certification enabled Plaintiffs to seek class-wide declaratory and injunctive  
10 relief on behalf of all class members.

11 The strength of Plaintiffs' claims, however, must be balanced against the  
12 inherent risk of litigation, the complexity of the case, the fact that some of the legal  
13 questions may present issues of first impression, the significant amount of time it  
14 would take to litigate this case and the uncertainty of whether Plaintiffs would  
15 obtain all the relief they seek. *See Staton*, 327 F.3d at 959.

16 By negotiating and agreeing to a comprehensive settlement, Plaintiffs have  
17 eliminated the risk of litigation and ensured broad and substantial relief. That relief  
18 includes significant changes to the way Defendants operate the YAT program and  
19 other non-court-ordered supervision programs for Riverside County youth, along  
20 with additional beneficial changes, such as providing additional community  
21 oversight and funding to community organizations. (*See generally* Agreement;  
22 Torres-Guillén, Decl. ¶ 15.) While some of this relief might have been obtained  
23 through trial, the relief provided in the Agreement is much more extensive and  
24 detailed than the injunctive relief that Plaintiffs could probably have obtained from  
25 the Court. (*Id.*, ¶ 17.) The Parties' carefully negotiated settlement also has the  
26 benefit of months of input from Defendants on what kind of policies and procedures  
27 would be most effective and efficient in reforming the YAT program, along with  
28 input from Plaintiffs on what kind of policies and procedures would cure the civil



1 rights violations and best help class members. (*Id.*, ¶¶ 12-16.) It is unlikely that a  
2 successful trial would have resulted in such extensive relief.

3 The Agreement will also provide relief much sooner than if the Parties  
4 continued to litigate. (*See generally* Agreement.) The substantial and immediate  
5 relief described in the Agreement weighs heavily in favor of approval. *See Kim v.*  
6 *Space Pencil, Inc.*, No. C 11-03796 LB, 2012 U.S. Dist. LEXIS 169922, at \*15  
7 (N.D. Cal. Nov. 28, 2012) (when a class settlement obtains “substantial and  
8 immediate relief” to the class, that relief weighs “heavily in favor of its approval  
9 compared to the inherent risk of continued litigation, trial, and appeal”).

10 **C. Class Members Reacted Positively to the Settlement And Did Not Raise**  
11 **Any Objections**

12 After preliminary approval, the claims administrator mailed notices of the  
13 Settlement to more than 39,319 class members (and/or their parents or guardians), and  
14 notice was also posted on websites and in prominent locations. (Moran Decl., ¶ 11.)  
15 Class Counsel also established the Hotline, which received 154 voicemail messages.  
16 (Nelson Decl., ¶ 13.) Class Counsel responded to all 154 callers. (*Id.*) Class Counsel  
17 Linnea Nelson also received one email message from an individual who said she had  
18 had a positive experience with the YAT program and thought the lawsuit was the  
19 “funniest lawsuit” she had ever seen. (*Id.* ¶ 16.) None of these 155 individuals  
20 objected to the Settlement, and many expressed approval. (*Id.*, ¶¶ 15, 17.) Class  
21 Counsel also received no written objections (*id.*, ¶ 17), and Defendants’ counsel  
22 likewise received no objections. (Moran Decl., ¶ 13.) The lack of any objection  
23 whatsoever by class members or their parents or guardians, and the many positive  
24 reactions, strongly supports the fairness and reasonableness of the Settlement.

25 **D. A Governmental Participant is a Party to the Agreement, Weighing in**  
26 **Favor of Settlement**

27 The participation of a governmental entity in the settlement of a class action  
28 suit serves to protect the interest of the class members. *See Glass v. UBS Fin.*

1 *Servs.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at \*15 (N.D. Cal. Jan.  
2 26, 2007). When governmental entities are given notice of a settlement, and do not  
3 object, this weighs in favor of the settlement. *See Browning v. Yahoo! Inc.*, No.  
4 C04-01463 HRL, 2007 U.S. Dist. LEXIS 86266, at \*37 (N.D. Cal. Nov. 16, 2007).  
5 Defendant County of Riverside is a party to the Agreement and heavily participated  
6 in the arms'-length negotiation of the Agreement. No other governmental agencies  
7 or departments, including the County Juvenile Court and the County Public  
8 Defender, objected or commented on the settlement except to support the  
9 Agreement. Therefore, this factor also weighs in favor of approval of the  
10 Agreement.

## 11 **VII. CONCLUSION**

12 Based on the forgoing, the Plaintiffs respectfully request that the Court grant  
13 this Motion and enter the proposed unopposed Final Approval Order. The proposed  
14 settlement that the Parties have carefully negotiated over the course of several  
15 months is not only fair, reasonable, and adequate, but in fact provides substantial  
16 and immediate benefits to the class of the type that might not be available even after  
17 a successful trial. The Parties have provided notice to class members and/or their  
18 parent/guardian and received no objections from any of them. Accordingly, there is  
19 no reason to deny the Motion and the Settlement should receive final approval.

20 Plaintiffs also respectfully request that the Court grant Plaintiffs' Motion for  
21 Attorneys' Fees. In light of the compelling Agreement and argument *supra* and in  
22 the Motion for Attorneys' Fees, the Court should approve Plaintiffs' unopposed

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1 Motion for Attorneys' Fees, which the Court set for hearing the same date as the  
2 hearing on this Motion.

3 Dated: March 9, 2020

4 By: /s/ Sylvia Torres-Guillén

5 ACLU FOUNDATION OF SOUTHERN  
6 CALIFORNIA  
Sylvia Torres-Guillén  
Victor Leung

7 ACLU FOUNDATION OF NORTHERN  
8 CALIFORNIA  
Linnea L. Nelson

9 AMERICAN CIVIL LIBERTIES UNION  
10 FOUNDATION  
Sarah Hinger (Admitted *Pro Hac Vice*)

11 ACLU FOUNDATION OF SAN DIEGO AND  
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